(3)

**IN THE HIGH COURT OF JUDICATURE, AT BILASPUR**

**Civil Revision No. 43 /06** Single Bench

**APPLICANTS**
**Defendants**

1. Kirtibala, aged about 32 years,
2. Hemant Kumar aged 28 years
3. Ramant Kumar aged 25 years

All daughter and sons of Late Shri Yashwant Singh, R/o Near Baudh Bihar, Sadhu Chal, Tulsipur, Rajnandgaon, Distt. Rajnanadgaon.

P.R. No. 28/2/06
Presented by Shri V.K. Tekam
dated 27/2/06

**VERSUS**

**NON-APPLICANT**
**Maintiff** : Vimla Bai, aged about 55 years widow of Late Yashwant Singh R/o Village Baigatola, Tah-Khairagarh, Distt. Rajnangaon

**REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE**

(Against the order dated 13.2.2006 passed by A.D.J. Khairagarh in C.S. No. 2-A/05)

A.F.R.

XI-HC-22

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आदेश पत्रक

मामला क्रमांक Civil Rev NO 43/2006 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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05.04.2006

Shri BP Gupta, counsel for the applicants.

None for non-applicant.

Heard on admission and M.(C.)P.No.496/2006.

Yashwant Singh was an employee in Forest Department. After his death, the claim of non-applicant to receive his retrial benefits, was opposed by the applicants, therefore, the Department directed for production of succession certificate. Hence, non-applicant/plaintiff and applicants/defendants filed applications for grant of succession certificate bearing succession case No.11/99 and 6/99. Both the applications were heard and decided by Civil Judge, Class I, Khairagarh, vide order dated 16.08.2002. The Court rejected the application of non-applicant/plaintiff on the ground that she is not the legally wedded wife of the deceased Yashwant Singh and allowed the application of applicants/defendants who are children of the deceased from his first wife Hem Kumari who died on 14/01/1996. Non-applicant/plaintiff challenged both the orders by filing separate appeals and the appellate Court dismissed both these appeals vide order dated 29.10.2004.. Therefore, describing complete details regarding her marriage to be valid and also relying on nomination

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| | made by the deceased Yashwant Singh in her favour claiming the cause of action arose for the suit to be 29.10.2004 i.e.., the date on which her both the appeals were dismissed, she filed a suit against the applicants/defendants for obtaining decree of declaration, declaring her marriage with Yashwant Singh valid, the order allowing grant of succession certificate in favour of applicants to be null and void and further consequential declaration.<br><br>Applicants/defendants filed an application under Order VII Rule 11 & 12 read with Section 151 of the CPC alleging the suit time barred and barred by the principle of *res-judicata.* Learned trial Court after hearing both the parties without adjudicating the disputes on merit dismissed the application vide order dated 13/12/2006 passed in Civil Suit No. 2-A/2005. The applicants aggrieved by the impugned order have preferred this revision under Section 115 of the Code of Civil Procedure.<br><br>Counsel for the applicants contended that from plaint averment the suit was barred by law of limitation and law of succession, therefore, the plaint was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. | |

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Sections 383 (e) and 387 of the Indian Succession Act 1925 (henceforth "the Act") reads as below :-

*"383.- Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:-*

*(a) xxxxx xxxxx xxxxx*

*(b) xxxxx xxxxx xxxxx*

*(c) xxxxx xxxxx xxxxx*

*(d). xxxxx xxxxx xxxxx*

*(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.*

*387. "Effect of decisions under this Act, and liability of holder of certificate there under.- No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto."*

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From conjoin reading of the above provisions, it is manifest that decision on any question of right between any parties shall not bar the trial of same question in any suit or in any other proceeding between the same parties. Here in the instant case though it has been decided that the plaintiff/non-applicant has no right to obtain succession certificate as she being not legally married wife of deceased Yashwant Singh by the Court while deciding the grant of succession certificate, yet plaintiff/non-applicant has right to raise the same question against the applicants who were parties to the succession proceedings, by filing a suit and that she did.

Section 14(1), Articles 58 and 59 of the Limitation Act, 1963 are relevant provisions applicable to the present case which read as below:'

> "14. Exclusion of time of proceeding bona fide in Court without jurisdiction.- (1) in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

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## PART III -SUITS RELATING TO DECLARATIONS

| Description of suit | Period of limitation | Time from which period begins to run. |
|---|---|---|
| 58. To obtain any other declaration | Three years | When the right to sue first accrues. |
| 59. To cancel or set aside an instrument or decree or for the rescission of a contract | Three years | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |

Admittedly non-applicant/plaintiff when she lost her claim to obtain succession certificate on the death of Yashwant Singh, by Court dealing with the matter of grant of succession certificate on the ground that she is not the legally wedded wife of Yashwant Singh, the instant suit has been filed claiming cause of action to be arisen on 29/10/2004 when she lost her appeal.

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The word "instrument" is not defined in the Limitation Act, 1963, therefore, from other sources the meaning of "instrument" referred in Article 59 of the Limitation Act is to be ascertained. Article 59 prescribes period of limitation for instituting suit for cancellation of instrument or decree or rescission of contract. Commonly "instrument" contemplates a document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. From definition contained in Indian Stamp Act and Notaries Act also, it is clear that documents by which any right or liability is or purports to be created, transferred, limited, extended extinguished or recorded are instruments. Succession Certificate is granted in the Forms set forth in Schedule VIII of the Act, which empowers the person in whose favour it is issued to collect debts or securities. The term "instrument" as contemplated under Art.59 has a wide meaning and apparently it covers the Succession Certificate.

Section 9 of Code of Civil Procedure and Order 7 Rule 11 (d) of the same read as below:

> "9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein

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contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

(Explanation I) - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

(Explanation II) For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.)

11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) xxxx xxxx xxxx

(b) xxxx xxxx xxxx

(c) xxxx xxxx xxxx

(d) where the suit appears from the statement in the plaint to be barred by any law"

From the plaint averment it is crystal clear that the instant civil suit instituted by the non-applicant/plaintiff is not barred under any of the provisions of the Indian Succession Act, so far as limitation is concerned, the suit falls within the period of limitation as a result

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| | of conjoin effect of Section 14 and Articles 58 & 59 of the Limitation Act. Therefore, the cognizance of instant suit by civil Court is neither expressly nor impliedly barred.<br>The revision is liable to be dismissed summarily, hence it is dismissed.<br>In the light of above order, M.(C.)P.No.496/2006 & IA No.124/2006 stand disposed of.<br>**Sd/-**<br>**V.K.Shrivastava**<br>**Judge** | |

Padma/
Raju

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